



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 5004-00
19 January 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the United States Marine Corps Reserve, filed an application with this Board requesting transfer to the Retired Reserve vice being discharged on 1 October 1999.

2. The Board, consisting of Mr. Cooper, Mr. Beckett and Mr. Mackey, reviewed Petitioner's allegations of error and injustice on 17 January 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was commissioned a 2ndLT (O-1) on 20 August 1976. He then served on active duty and in the Marine Corps Reserve. At the end of his anniversary year on 14 November 1989, he had earned 14 consecutive qualifying years for reserve retirement. In 1988 he was promoted to MAJ (O-4).

d. In 1989 Petitioner was diagnosed with a sarcoid granuloma of the cerebrum (brain tumor), and underwent surgery and a period of convalescence. Consequently, he did not earn qualifying years for retirement in the anniversary years ending 14 November 1990 and 1991. He then returned to a drilling status and earned four more consecutive qualifying years. At the end of his anniversary year on 14 November 1995, he was credited with 18 years of qualifying service for reserve retirement. During this period, on 26 May 1994 the Bureau of Medicine and Surgery (BUMED)

found him not physically qualified for retention in the naval service because of residual neurologic deficits from his tumor and surgery. BUMED noted that the condition was permanent and that he should have been disqualified in 1989.

e. On 8 November 1994 Headquarters Marine Corps (HQMC) informed Petitioner that based on his request and long service, he was being placed in the "safety zone" to complete 20 years of qualifying service. Petitioner was unable to earn additional qualifying years and a last minute attempt to process him for early retirement due to his disability was not completed in a timely manner. He was honorably discharged on 1 October 1999.

f. Petitioner states in his application that he was unable to complete correspondence courses because of his deteriorating mental and physical condition. He describes the attempts he made to qualify for early retirement.

g. Attached to enclosure (1) is an advisory opinion from HQMC which states, in part, as follows:

... We recommend the following:

The Board for Correction of Naval Records (BCNR) direct Headquarters Marine Corps (MMSR-5) to transfer (Petitioner) to the Retired Reserve Awaiting Pay at Age Sixty, under the provisions of the Reserve Transition Benefits Program The effective date of assignment to the Retired Reserve should read 1 October 1999 vice his present discharge date of 1 October 1999.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In view of the circumstances of the case, the Board agrees with the recommendation contained in the advisory opinion and concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve, effective 1 October 1999, under the provisions of the Reserve Transition Benefits Program.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the circumstances of his case.

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve in the grade of MAJ

effective 1 October 1999 vice being discharged on that date.

b. That this Report of Proceedings be filed in Petitioner's naval record.

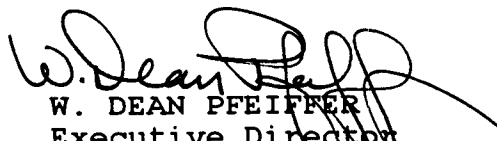
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director